

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS**

RANDALL L. BYRD,

Plaintiff

v.

**GLOBAL RECOVERY GROUP LLC;
UNITED STATES INTERNATIONAL
DEVELOPMENT FINANCE
CORPORATION,**

Defendants.

Cause No. 5:20-CV-1020

NOTICE OF REMOVAL OF CIVIL ACTION

Pursuant to 28 U.S.C. § 1442(a), the United States, on behalf of the U.S. International Development Finance Corporation (“DFC”) hereby removes to the United States District Court, Western District of Texas, the above-captioned State Court Case, currently docketed as Civil Action No. CVW2000508 in the District Court of Wilson County, Texas.

In support of removal, the United States submits the following:

1. On August 3, 2020, Plaintiff filed a Petition in state court, attached hereto as part of Exhibit A.

2. In the Petition, Plaintiff alleges causes of action for fraud and conspiracy against DFC and Global Recovery Group LLC in connection with a lien on property that Plaintiff states is owned by Prefabricados y Modulares de Monterrey, S de. R.I. de CV.

1. The State Court Case is removable under 28 U.S.C. § 1442(a)(1) because DFC, an agency of the United States, has been sued by Plaintiff for actions allegedly taken in its official

capacity, or for or relating to an act by DFC under color of its office.¹ Accordingly, federal court is the proper forum for this suit.

3. This notice of removal meets the 30-day deadline in 28 U.S.C. § 1446(b) as it is being filed less than 30 days after the filing of the Petition in this case. Furthermore, the United States maintains and reserves all defenses with respect to defects in the service of process. Here, neither the Attorney General of the United States, nor the United States Attorney for the Western District of Texas, have been served with the Summons or Petition. *See, e.g., Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347–48 (1999) (time to remove is not triggered until the defendant is formally served with process, even if the defendant receives a copy of the plaintiff’s complaint through informal channels before that time); *Quality Loan Service Corp. v. 24702 Pallas Way, Mission Viejo, CA 92691*, 635 F.3d 1128, 1133 (9th Cir. 2011) (holding that plaintiff’s notice to federal government was insufficient to constitute formal process and thus did not trigger 30-day period for federal government to remove state court action, where plaintiff had not served the complaint upon the United States attorney or sent copies of process and complaint by registered or certified mail to the Attorney General). But, in any event, this Notice is timely under 28 U.S.C. § 1446(b).

4. The state court case is removable to this Court as “the district court of the United States for the district and division embracing the place wherein . . . [the State Court Case] is pending.” 28 U.S.C. § 1442(a).

¹ 22 U.S.C. § 9612(a) (“There is established in the executive branch the United States International Development Finance Corporation (in this chapter referred to as the “Corporation”), which shall be a wholly owned Government corporation for purposes of chapter 91 of title 31 under the foreign policy guidance of the Secretary of State.”); *see also, e.g., BroTech Corp. v. European Bank for Reconstruction & Development*, No. CIV.A. 00–2160, 2000 WL 1751094, at *2 (E.D. Pa. 2000) (concluding that the Overseas Private Investment Corporation, a predecessor of DFC, was a federal agency for the purposes of section 1442).

5. Pursuant to 28 U.S.C. § 1446(a), the United States attaches hereto copies of all State Court Case pleadings, orders and other state court filings received by DFC from Plaintiff, including (1) the Texas Secretary of State's Cover Sheet; (2) the Summons; and (3) the Petition.

6. In addition, the United States may raise federal defenses to the Petition, including, but not limited to, Plaintiff's failure to comply with the requirements of the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671–2680 ("FTCA").

7. Pursuant to the provisions of 28 U.S.C. § 1446(d), a Notice of Filing Notice of Removal will be filed with the 218th Judicial District Court in Wilson County, Texas.

8. Pursuant to Local Court Rule CV-3(a), a JS 44, Civil Cover Sheet is attached hereto as Exhibit B.

9. As this federal case is being initiated via removal, a Supplement to JS 44 is attached hereto as Exhibit C.

10. For the reasons stated above, the State Court Case is subject to removal to the United States District Court for the Western District of Texas.

WHEREFORE, the United States, on behalf of the International Development Finance Corporation, hereby gives notice of removal of the State Court Case from the 218th District Court for Wilson County to the United States District Court for the Western District of Texas.

Dated: August 28, 2020

Respectfully submitted,

JOHN F. BASH
UNITED STATES ATTORNEY

By: /s/Faith Johnson Lowry
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 28, 2020, I electronically filed the foregoing NOTICE OF REMOVAL with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants. In addition, I will send a courtesy copy by email to counsel of record, at **mark.taylor@wallerlaw.com**.

/s/Faith Johnson Lowry

FAITH JOHNSON LOWRY

Assistant United States Attorney